

**Rhonda Lynn Shirey d/b/a Frontline Ultra Care and  
United Food and Commercial Workers Union  
Local 1059, AFL-CIO. Case 9-CA-40590**

September 29, 2004

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND  
MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on October 3, 2003, the General Counsel issued the original complaint on November 26, 2003, against Rhonda Lynn Shirey d/b/a Frontline Ultra Care, the Respondent, alleging that it had violated Section 8(a)(1) and (3) of the Act. The Respondent filed an answer to the original complaint on about December 11, 2003.

Thereafter, on February 20, 2004, the Respondent and the Charging Party entered into an informal settlement agreement, which was approved by the Acting Regional Director on February 23, 2004. The settlement agreement required the Respondent to (1) pay \$3200 in backpay to employee Terri (Holcomb) Lowery, in three installments, due on March 12, April 9, and May 21, 2004; and (2) post a notice to employees regarding the complaint allegations. The settlement agreement also provided that

Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

On July 15, 2004, the Regional Director issued an Order revoking settlement agreement, complaint and notice of hearing (the Order) on the ground that the Respondent had failed to comply with all of the terms of the settlement agreement. Specifically, the Order alleged that the Respondent had failed to pay Lowery the second installment payment of \$1100 in backpay, less applicable taxes, which was due on April 9, 2004, and had failed to pay Lowery the third installment payment of \$960 in backpay, less applicable taxes, plus \$40 in (nontaxable) interest, which was due on May 21, 2004.

The Order provided that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent was required to file an answer to the new complaint within 14 days from service of it. The Respondent failed to file an answer to the new complaint. By letter dated August 9, 2004, counsel for the General Counsel advised the Respondent that unless it filed an answer by close of business on August 16, 2004, a mo-

tion for default judgment would be filed. The Respondent has not filed an answer to the July 15, 2004 complaint.

On August 24, 2004, the General Counsel filed a Motion for Default Judgment and Memorandum in Support with the Board. On August 27, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days from service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 9, 2004, notified the Respondent that unless an answer was received by August 16, 2004, a motion for default judgment would be filed.

According to the uncontroverted allegations in the General Counsel's motion, the Regional Director revoked the settlement agreement because the Respondent failed to make the final two of three installment payments of backpay due to Lowery. Under the terms of the settlement agreement, set forth above, the Respondent's answer filed to the original November 26, 2003 complaint was withdrawn when the Acting Regional Director approved the settlement agreement on February 23, 2004. Consequently, as that answer no longer existed, the Respondent was obligated to file an answer to the new complaint issued on July 15, 2004. As stated above, however, the Respondent has failed to file an answer to that complaint.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been owned by Rhonda Lynn Shirey, a sole proprietorship doing business as Frontline Ultra Care, with an office and place of business in Columbus, Ohio.

At all material times, the Respondent has been engaged in providing in-home support and homemaking services, including personal care, transportation, cooking, cleaning, shopping and recreation, to individual consumers pursuant to a contract with the Fairfield County Board of Mental Retardation and Developmental Disabilities.

Based on a projection of its operations since about September 10, 2003, at which time the Respondent commenced its operations in Fairfield County, Ohio, the Respondent, in conducting its business operations described above, will annually derive gross revenues in excess of \$100,000, and will annually provide services valued in excess of \$50,000 to the State of Ohio pursuant to a contract with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) and receive in payment funds that are obtained from the United States Government through the Medicare/Medicaid Program.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that United Food and Commercial Workers Union Local 1059, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, each of the following individuals held the position set forth opposite her or his name and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Rhonda Lynn Shirey	- Owner and Chief Executive Officer
Mike Wilson	- District Manager

On about September 10, 2003, the Respondent refused to hire Terri Lowery, whose legal name on that date was Terri Holcomb.

The Respondent refused to hire Lowery because Lowery formed, joined or assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

## CONCLUSION OF LAW

By refusing to hire Terri Lowery, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees and applicants for employment, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. *FES*, 331 NLRB 9, 12–

14 (2000), supplemental decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002). The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Terri Lowery because of her union and concerted activities, we shall order the Respondent to offer her instatement to the position for which she applied or, if that job no longer exists, to a substantially equivalent position. We also shall order the Respondent to make Lowery whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup> The Respondent shall also be required to remove from its files any references to the unlawful refusal to hire Lowery, and to notify her in writing that this has been done and that the unlawful refusal to hire will not be used against her in any way.

## ORDER

The National Labor Relations Board orders that the Respondent, Rhonda Lynn Shirey d/b/a Frontline Ultra Care, Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire job applicants because of their union or protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Terri Lowery instatement to the position to which she applied or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she would have enjoyed absent the discrimination against her.

(b) Make Terri Lowery whole for any loss of earnings and other benefits suffered as a result of the discrimina-

<sup>1</sup> As indicated above, it appears that the Respondent made the installment payment due Lowery on March 12, 2004, and therefore has already paid her \$1100 in backpay, less taxes. This matter shall be taken into account in the compliance stage of this proceeding.

tion against her, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful refusal to hire Terri Lowery, and within 3 days thereafter notify her in writing that this has been done and that the unlawful refusal to hire her will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Columbus, Ohio, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire job applicants because of their union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Terri Lowery reinstatement to the position to which she applied or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she would have enjoyed absent the discrimination against her.

WE WILL make Terri Lowery whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to our unlawful refusal to hire Terri Lowery, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful refusal to hire her will not be used against her in any way.

RHONDA LYNN SHIREY D/B/A FRONTLINE  
ULTRA CARE

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



